

11439



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AP/LSC/2015/0379**

Property : **Birkbeck Mansions, Birkbeck
Road, London N8 7PG**

Applicant : **Tidescope Limited**

Representative : **Sandrove Brahams**

Respondents : **Various Leaseholders as per the
application**

Representative :

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **P M J CASEY MRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 November 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum shown in respect of each of the flats listed on the "Apportionment Calculations" sheet attached to this decision is payable by the Respondent leaseholder of that flat in respect of the service charges for the year 2015.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge year 2015 in respect of a major works contract.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The tribunal considered the case on 4 November 2015 on the basis of the hearing bundle provided by the Applicant on 23 October 2015 in accordance with the Tribunal's Directions dated 14 September 2015. No party sought a formal hearing as provided as an alternative in those Directions.

The background

4. The property which is the subject of this application is a three storied terrace of eight blocks of flats each containing six flats.
5. None of the parties requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Respondents hold long leases of the flats at the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The application identified the relevant issues for determination as being the payability and/or reasonableness of service charges for 2015

relating to the cost of a proposed major works contract for the external refurbishment of all eight blocks at an estimated total cost of £131,713.97 including professional fees and VAT.

8. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The evidence

9. The Directions required the Applicant to serve on each of the Respondents a copy of the application and the Directions which made provision for any Respondent who chose to do so to object to the application. None did so. There is no challenge based on the need to do the works to refurbish the external façade to the property nor that such works are beyond the landlord's responsibilities under the leases and the lessees' obligations to contribute to the cost of such works through the service charge provisions of the leases. No specification for the works was included in the hearing bundle but an itemised breakdown of the tenders received from five contractors was and none of the potential Respondents has raised any issue in regard to such matters or the Applicant's decision to proceed with the lowest tender received. The S20 consultation exercise carried out appears to be a model of its kind embracing as it did an earlier abortive attempt to get the works done which involved the leaseholders voting on variations to the original specification and again there is no challenge to the consultation proceed.

The lease

10. The Applicant has not provided a statement of case but did include a copy of the lease of Flat 9 in the hearing bundle and it is assumed that all the leases are in this form. Clause 5 of the lease contains the lessor's covenants including the obligations to insure repair and decorate the building whilst Clause 4(2)(a) contains the lessee's covenant to pay a proper share of the expenditure incurred by the lessor in complying with Clause 5 through the payment of "the maintenance charges" as specified in Part 7 of the Second Schedule to the lease.
11. By Clause (4)(2)(b) the lessee covenants to pay a yearly sum as specified in Part 6 of the Second Schedule as an interim contribution to the maintenance charge on 1st June in advance in each year being a fair proportion of the total expenditure incurred, etc, revised and adjusted in the light of the previous year's actual expenditure. The other sub clauses of 4(2) deal with certification of expenditure, payment of any excess over the interim payment or credit if that payment exceeded actual expenditure and the lessor's financial year being the 12 months from 1 July to 30 June. Clause 4(2)(h) provides that expenditure incurred is deemed to include not only actual expenditure but also reasonably anticipated expenditure of a periodic or recurring nature as

may be allocated to the financial year in question as the lessor considers is fair and reasonable in the circumstances.

12. The lease does not make provision for a specified proportion of the lessor's total expenditure in respect of the matters covered by Clause 5 to be paid but the hearing bundle contains an "Apportionment calculations" sheet showing the individual flats contributing either 1.97% or 2.14% of such expenditure. The tribunal assumes that these percentages are of long standing usage in the calculation of the maintenance charges, are accepted by the lessees and represent "a fair and proper proportion of ..." as specified in Part 7 of the Second Schedule.

The tribunal's decision

13. If the works of repair and redecoration the Applicant proposes to undertake to the front façade of Birkbeck Mansions are carried out the lessees of the flats will be required to contribute to the cost of those works through payment of "the maintenance charge". If those works are carried out in accordance with the proposed specification and at the cost of the lowest tender received from ISIS Restoration together with Sandrove Braham's fees then the cost would be reasonable and the amount shown against each flat on the Apportionment Calculations sheet included in the hearing bundle would be payable by the lessee of the relevant flat.
14. If those sums have already been demanded either through the maintenance charges or interim contribution provisions of the leases they are payable in accordance with those provisions otherwise the earliest the Applicant can seek payment is through the interim contribution due on 1st June 2016 as there are no on demand payment provisions in the lease.
15. Nothing in this decision precludes any leaseholder from challenging the standard to which the works have been carried out nor the cost of them once they have been completed and the final total cost is known.

Name: Patrick M J Casey

Date: 13 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Birkbeck Mansions Major Works
Apportionment Calculations

Premises	% Contribution	Preliminaries +	Per Flat	Total Balance
		Contingency	Contribution	
		Annual Contribution	Annual Contribution	
Flat 1	1.9700%	£1,100.21	£1,505.65	£2,605.86
Flat 3	1.9700%	£1,100.21	£1,505.65	£2,605.86
Flat 5	2.1400%	£1,195.15	£1,635.58	£2,830.73
Flat 7	2.1400%	£1,195.15	£1,635.58	£2,830.73
Flat 9	2.1400%	£1,195.15	£1,635.58	£2,830.73
Flat 11	2.1400%	£1,195.15	£1,635.58	£2,830.73
Flat 13	1.9700%	£1,100.21	£1,585.80	£2,686.01
Flat 15	1.9700%	£1,100.21	£1,585.80	£2,686.01
Flat 17	2.1400%	£1,195.15	£1,722.64	£2,917.79
Flat 19	2.1400%	£1,195.15	£1,722.64	£2,917.79
Flat 21	2.1400%	£1,195.15	£1,722.64	£2,917.79
Flat 23	2.1400%	£1,195.15	£1,722.64	£2,917.79
Flat 25	1.9700%	£1,100.21	£1,500.63	£2,600.84
Flat 27	1.9700%	£1,100.21	£1,500.63	£2,600.84
Flat 29	2.1400%	£1,195.15	£1,630.12	£2,825.27
Flat 31	2.1400%	£1,195.15	£1,630.12	£2,825.27
Flat 33	2.1400%	£1,195.15	£1,630.12	£2,825.27
Flat 35	2.1400%	£1,195.15	£1,630.12	£2,825.27
Flat 37	1.9700%	£1,100.21	£1,427.66	£2,527.87
Flat 39	1.9700%	£1,100.21	£1,427.66	£2,527.87
Flat 41	2.1400%	£1,195.15	£1,550.86	£2,746.01
Flat 43	2.1400%	£1,195.15	£1,550.86	£2,746.01
Flat 45	2.1400%	£1,195.15	£1,550.86	£2,746.01
Flat 47	2.1400%	£1,195.15	£1,550.86	£2,746.01
Flat 49	1.9700%	£1,100.21	£1,528.14	£2,628.35
Flat 51	1.9700%	£1,100.21	£1,528.14	£2,628.35
Flat 53	2.1400%	£1,195.15	£1,660.01	£2,855.16
Flat 55	2.1400%	£1,195.15	£1,660.01	£2,855.16
Flat 57	2.1400%	£1,195.15	£1,660.01	£2,855.16
Flat 59	2.1400%	£1,195.15	£1,660.01	£2,855.16
Flat 61	1.9700%	£1,100.21	£1,520.97	£2,621.18
Flat 63	1.9700%	£1,100.21	£1,520.97	£2,621.18
Flat 65	2.1400%	£1,195.15	£1,652.21	£2,847.36
Flat 67	2.1400%	£1,195.15	£1,652.21	£2,847.36
Flat 69	2.1400%	£1,195.15	£1,652.21	£2,847.36
Flat 71	2.1400%	£1,195.15	£1,652.21	£2,847.36
Flat 73	1.9700%	£1,100.21	£1,436.03	£2,536.24
Flat 75	1.9700%	£1,100.21	£1,436.03	£2,536.24
Flat 77	2.1400%	£1,195.15	£1,559.96	£2,755.11
Flat 79	2.1400%	£1,195.15	£1,559.96	£2,755.11
Flat 81	2.1400%	£1,195.15	£1,559.96	£2,755.11
Flat 83	2.1400%	£1,195.15	£1,559.96	£2,755.11
Flat 85	1.9700%	£1,100.21	£1,451.58	£2,551.79
Flat 87	1.9700%	£1,100.21	£1,451.58	£2,551.79
Flat 89	2.1400%	£1,195.15	£1,576.85	£2,772.00
Flat 91	2.1400%	£1,195.15	£1,576.85	£2,772.00
Flat 93	2.1400%	£1,195.15	£1,576.85	£2,772.00
Flat 95	2.1400%	£1,195.15	£1,576.85	£2,772.00
	100.0000%	£55,848.16	£75,865.84	£131,714.00